

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 6523

Joint Petition of Network US, Inc. and)
Affinity Corporation for Approval of a)
Foreclosure Sale Asset Purchase Agreement)

Order entered: 9/20/2001

I. INTRODUCTION

On July 5, 2001, Network US, Inc. ("Network") and Affinity Corporation ("Affinity") (collectively "Petitioners") jointly filed a Telecommunications Merger and or Acquisition Request for Approval Form ("Petition") requesting authority from the Vermont Public Service Board ("Board"), pursuant to 30 V.S.A. §§ 107, 109 and 311, for approval of a Foreclosure Sale Asset Purchase Agreement ("Agreement") and related transactions.

On July 30, 2001, the Vermont Department of Public Service ("Department") filed a letter with the Board recommending the Board approve the asset sale under the following conditions: (1) Network should file a letter notifying the Board of the transaction's completion within one week of such completion; (2) Network should file a revised tariff reflecting Affinity's existing services within one week of completion of the proposed transaction; (3) Affinity should file a letter with the Board requesting revocation of its CPG; (4) Affinity should provide notice to customers of the transaction; and (5) Affinity should reimburse its customers any charges they might incur as a result of the proposed transaction. The Department's letter states that the proposed transaction will be transparent to customers and would not detrimentally impact Vermont consumers or cause them inconvenience or confusion. The Department further recommended the Board approve the Petition without further investigation or hearing.

The Board has reviewed the Petition and the accompanying documents and agrees that approval should be granted without hearing.

II. FINDINGS OF FACT

Based upon the Petition and accompanying documents, we hereby make the following findings of fact.

1. Affinity is authorized to provide telecommunications services in Vermont pursuant to a

Certificate of Public Good granted by the Board on December 13, 1996, in Docket No. 5908. Petition at 1.

2. Network is authorized to provide telecommunications services in Vermont pursuant to a Certificate of Public Good granted by the Board on July 11, 2001 (CPG No. 644). CAA, Inc. ("CAA") is a wholly-owned subsidiary of Network which is not certificated as a telecommunications carrier in Vermont. Department letter dated August 10, 2001 and Petition at 1.

3. Affinity and Network have entered into an Agreement whereby CAA acquired substantially all of the telecommunications assets of Affinity, including Affinity's customer accounts. Simultaneous with the closing of the Agreement, CAA merged with and into Network, its parent company. Petition at 1.

4. As a result of the transactions, Affinity will cease to operate in Vermont. The customers of Affinity will be served by Network and the services offered by both entities will be incorporated into the tariff of Network. Petitioners have agreed to reimburse any switching fees incurred by customers as a result of the transactions and to notify customers of the transaction. Accordingly, the mergers should not cause undue inconvenience for Vermont consumers. Petition at 2-3 and Department letter dated August 10, 2001.

5. The proposed transactions should ensure existing customers of Affinity, should they choose to stay with the new provider, uninterrupted access to the same telecommunications services at the same rates, thus promoting the public good. Petition at 3.

III. DISCUSSION

The proposed transaction requires approval by the Board under 30 V.S.A §§ 109 and 311. These statutes condition approval of a proposed transfer of control upon findings that the transfer of control will promote the public good (30 V.S.A § 109). The statutes also condition approval of a merger or sale of assets upon a finding that the transaction will promote the public good (30 V.S.A. § 109) and will not obstruct or prevent competition (30 V.S.A § 311). These standards are met in this case.

Pursuant to 30 V.S.A. § 109, "a foreign corporation subject to the jurisdiction of the [Board], shall not make a sale . . . in any one calendar year constituting ten percent or more of the company's located within this state . . . nor merge nor consolidate . . ." without approval of the Board. Under 30 V.S.A. § 311, "[a] consolidation or merger . . . shall not become effective without the approval of the

[Board]"

After reviewing the Petition, we conclude that 30 V.S.A §§ 109 and 311 apply to the mergers of the Petitioners, which are certificated telecommunications carriers in Vermont. We further conclude that the transaction will not affect the existing customers of Affinity who will have access to current services at the same rates provided by Network. The customers of Affinity will be served by Network under Affinity's existing tariff offerings which will be consolidated into Network's tariff. In addition, Petitioners have agreed to reimburse any switching fees incurred by customers due to the transactions. The merger and sale of assets, therefore, will promote the public good. For all of these reasons, we conclude that the proposed transaction meets the standards set forth in 30 V.S.A. §§ 109, and 311 and should be approved.

IV. CONCLUSIONS

The acquisition of the assets of Affinity by Network in accordance with the asset purchase agreement, should be approved because the transactions will promote the public good of the State of Vermont and will not result in obstructing or preventing competition. 30 V.S.A. §§ 109, 311.

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The merger of CAA, Inc. with and into Network US, Inc., will promote the public good and, therefore, is approved.
2. The acquisition of the assets of Affinity Corporation by Network US, Inc. in accordance with the Foreclosure Sale Asset Purchase Agreement, will promote the public good and, therefore, is approved.
3. Petitioners shall file a letter notifying the Board of the completion of the transactions within one week of such completion.
4. Network US, Inc. shall file revisions to its tariff to include the existing service offerings of Affinity Corporation within one week of the completion of the transactions.
5. Affinity Corporation shall file a letter requesting revocation of its CPG with the Board within one week of the completion of the transactions.
6. A Certificate of consent to the merger of CAA, Inc. with and into Network US, Inc. and the asset purchase of Affinity Corporation by Network US, Inc. shall be issued.

DATED at Montpelier, Vermont, this 20th day of September, 2001.

<u>s/Michael H. Dworkin</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

Filed: September 20, 2001

Attest: s/Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any technical errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us).

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.